



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

**CASE OF ARSOV v. THE FORMER YUGOSLAV REPUBLIC OF
MACEDONIA**

(Application no. 44208/02)

JUDGMENT

STRASBOURG

19 October 2006

FINAL

19/01/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Arsov v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 25 September 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44208/02) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a citizen of the former Yugoslav Republic of Macedonia, Mr Petar Arsov (“the applicant”), on 19 November 2002.

2. The applicant was represented by Mr T. Torov, a lawyer practising in Stip. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska-Gerovska.

3. On 12 May 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant lives in Kocani, in the former Yugoslav Republic of Macedonia.

5. During 1978/1979 the applicant opened two certificates of deposits in foreign currency in the Kocani office of the “Stopanska Banka” Skopje (“the bank”) for a fixed period of 25 months. The terms of the agreement were stated on the cover of the bank account savings card. There was a bank stamp which defined three terms of the deposit: the amount of the savings, the duration of the deposit and the interest rate of 10%. Since the parties did

not terminate the agreement after it expired, it was considered that the certificate was extended. Until 1992 the bank continued to pay him interest, but at differing rates.

6. On 18 June 1991 the applicant brought a civil claim against the bank for payment of the difference in the interest rate. He claimed that the bank had applied a lower interest rate than agreed.

7. On 30 October 1991 the then Kocani Municipal Court (*Општински суд Кочани*) dismissed the applicant's claim. It found that until the end of October 1982, the applicant had received 10% interest. From October 1982 until the end of June 1986, the bank paid the applicant 11% interest, which was 1% higher than stated at the bank stamp on the bank account savings card. From 1 July 1986 until the end of 1990, the bank paid the applicant interest at a rate lower than 10%. This was in accordance with a bank decision, which was based on an inter-bank agreement which stipulated that domiciliary interest rate was to be calculated on the foreign currency deposits as of July 1986. In pursuance of that inter-bank agreement, the bank paid the applicant domiciliary interest lower than 10%. In absence of a written contract specifying a fixed interest rate and the fact that the applicant accepted the payment of an interest of 11% for a certain period, the court concluded that the parties had agreed on a variable interest rate.

8. On 30 December 1991 the applicant appealed against the decision.

9. On 20 November 1992 the then Stip District Court (*Окружен суд Штип*) upheld the applicant's appeal, quashed the lower court's decision and ordered a retrial. It instructed the lower court to establish whether there had been an agreement between the parties or not, *i.e.* to examine whether the stamp on the bank account savings card could be treated as an agreement.

10. On 14 May 1993 the Kocani Municipal Court upheld the applicant's claim. It found that the terms of the certificate of deposit, as stated on the bank stamp, had been agreed upon by the parties and remained valid afterwards.

11. On 11 June 1993 the applicant appealed against this decision asking the court to calculate the interest in foreign, not domestic currency. On 15 June 1993 the bank also lodged an appeal.

12. On 9 July 1993 the Stip District Court upheld the appeals and ordered a retrial. It found that the lower court had erred in establishing the facts about the period of validity of the certificate of deposit. It also instructed it to obtain an expert opinion to establish whether the interest for the respective period had been paid in foreign currency or not.

13. On 24 March 1994 the Municipal Court partially upheld the applicant's claim. It found that the bank stamp had to be considered as an agreement between the parties and ordered the bank to pay the difference in interest. The court dismissed the applicant's claim to calculate this difference in foreign currency.

14. On 27 April 1994 the applicant appealed against this decision as the interest should be calculated in foreign currency and paid either in foreign currency or in denar counter value according to the exchange rate valid on the date of the payment.

15. On 4 October 1994 the District Court upheld the applicant's appeal and overturned the decision. It found that there had been an unlawful enrichment by the bank. It held also that the difference in interest should be paid in foreign currency.

16. Once the District Court decision became final and executive, on 1 February 1995 the applicant requested the court to enforce his claim.

17. On 1 February 1995 the Kocani Municipal Court ordered the Payment Office to enforce the decision and to transfer the money due to the account of the applicant's representative ("the order").

18. On 13 February 1995 the Municipal Court dismissed the bank's objection (*npuzovop*) and ordered the enforcement of the order.

19. On 30 June 1995 the Stip District Court dismissed the bank's appeal and upheld the order. The money was transferred to the applicant.

20. Before instituting the enforcement proceedings, on 4 January 1995 the applicant lodged with the Supreme Court an appeal on points of law (*pevuzuja*) challenging the District Court's decision as it had not charged the bank with interest on the amount awarded. The bank also appealed to the Supreme Court.

21. On 26 February 1997 the Supreme Court upheld the parties' appeals on points of law and quashed the District Court's decision of 4 October 1994. It held that the lower court had wrongly applied national law. It also instructed the District Court to give consideration to the fact that the applicant had accepted the payment of a higher interest (11%) for a certain period of time and that he had complained only when the bank had paid him lower interest. It held that such behaviour implied that the applicant had agreed to a variable interest rate.

22. On 17 November 1997 the Stip Court of Appeal quashed the trial court's decision and remitted the case for a fresh consideration. It found that the lower court had erred in establishing the facts, in particular as to the applicant's reaction when the bank had paid him higher interest (11%) than what was allegedly agreed.

23. On 10 December 1997 the bank requested counter-enforcement (*protivizvrizuvanje*) of the money transferred to the applicant.

24. On 10 February 1998 the Court of First Instance upheld the bank's request ("the second order"). On 19 February 1998 the applicant appealed against the second order. On 10 April 1998 the Court of Appeal upheld the applicant's appeal and remitted the case for re-examination. On 17 September 1999 the Court of First Instance rejected the bank's request for counter-enforcement as out of time.

25. The proceedings on the merits resumed on 12 July 2000 when the bank requested adjournment. The next hearing was listed for 27 September 2001. The hearing of 24 October 2001 was adjourned due to the trial judge's absence. The hearing of 12 November 2001 was postponed on the applicant's request.

26. On 23 November 2001 the Kocani Court of First Instance dismissed as ill-founded the applicant's claim. It found that the applicant had been aware of and had accepted the payment of the interest rate of 11% (from October 1982 until July 1986) without challenging it. It also found that the applicant should have been aware of the bank's decision for a lower interest rate on foreign currency deposits after July 1986, since it had posted the announcement at the bank counters. The court furthermore concluded that an agreement for a variable interest rate existed between the parties.

27. On 4 February 2002 the applicant appealed against this decision.

28. On 29 May 2002 the Stip Court of Appeal dismissed the applicant's appeal and upheld the lower court's decision. It found no reasons to depart from the trial court's reasoning that the parties had agreed on a variable interest rate in pursuance to the bank's internal regulations.

29. According to the applicant, the decision was served on him on 28 June 2002.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The Court notes that the civil proceedings started on 18 June 1991 when the applicant filed his claim with the then Kocani Municipal Court. They ended on 28 June 2002 when the Court of Appeal's decision was served on the applicant.

33. The Government submitted that the period which had lapsed before the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia should not be taken into consideration.

34. The Court finds that the period which falls within its jurisdiction did not begin on 18 June 1991, but on 10 April 1997, after the Convention entered into force in respect of the former Yugoslav Republic of Macedonia (see *Atanasovic and Others v. "the former Yugoslav Republic of Macedonia"*, no. 13886/02, § 26, 22 December 2005; *Horvat v. Croatia*, no. 51585/99, § 50, ECHR 2001-VIII).

35. In assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings on 10 April 1997 (see *Styrkowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53;). In this connection the Court notes that at the time of the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia the proceedings had lasted five years, nine months and twenty-two days for three court levels.

36. The proceedings therefore lasted eleven years and ten days of which five years, two months and eighteen days fall to be examined by the Court for two levels of jurisdiction.

37. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; the *Humen v. Poland* [GC], no 26614/95, § 60, unreported, and the *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV; the *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35).

38. The Government averred that the case had been of a complex legal nature due to the historical context in which the claim had been introduced: the dissolution of the federal banking system of the former Yugoslavia; the financial independence of the State and the introduction of the new currency; the legal vacuum created after the dissolution of the federal State. They submitted that the proceedings complained of should not be considered as a single one, but as consisted of several sets which commenced after the higher court had considered the parties' remedy and

had remitted the case for re-examination. They submitted that the applicant had contributed to the length by availing himself of ordinary and extraordinary remedies, but that he had failed to request the national courts to speed up the proceedings. As regards the conduct of the authorities, the Government maintained that the courts had proceeded with the case with due diligence and that the scheduled hearings had been held without any interruption and delays. They maintained that there had been four courts' decisions during the four-year period after the case had been referred back for a retrial in November 1997.

39. The applicant contested the Government's argument concerning the complexity of the case stating that the former Yugoslav banking system had not had any influence to the case. He disagreed that he had created any delays in the proceedings by having recourse to the remedies available under domestic law. He also argued that the State had not referred to any national effective remedy concerning the length of the proceedings. As regards the conduct of the authorities, the applicant submitted that the higher courts had unreasonably remitted the case for re-examination instead of deciding it on the merits. He also disagreed that they had been active throughout the proceedings, referring in particular to the four-year interval before the trial court made its last decision. He stated that the enforcement proceedings concerning the bank's request for counter-enforcement had not affected the proceedings complained of.

40. The Court recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15; *Milošević v. "the former Yugoslav Republic of Macedonia"*, no. 15056/02, § 25, 20 April 2006).

41. The Court finds that the proceedings complained of should be considered as one single procedure, as the courts were considering the same-subject matter throughout. Further, although the case was of some legal complexity, this cannot alone justify the length of the proceedings.

42. Concerning the applicant's conduct, the Court finds that no periods of delay are imputable to him. The mere fact that he made full use of the remedies available under domestic law, cannot be considered as contributing to the length of the proceedings (see *Girardi v. Austria*, no. 50064/99, § 56, 11 December 2003).

43. On the other hand, the Court notes that there are substantial delays attributable to the authorities. It observes that it took four years for the Kocani Court of First Instance to decide the applicant's claim after the Court of Appeal had referred the case back for re-examination (17 November 1997-23 November 2001). Within this period, there was a period of total inactivity of two years and eight months (from 17 November 1997 to 12 July 2000). The proceedings lay dormant for additional one year and two

months (between 12 July 2000 and 27 September 2001). The Court cannot find that the Government has given sufficient explanation for the delays that occurred. As it has consistently held, it might be reasonable for national courts to await under certain circumstances the outcome of parallel proceedings as a measure of procedural efficiency. However, this decision must be reasonable having regard to the special circumstances of the case (see *mutatis mutandis* *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 110; *Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 39; *Pafitis and Others v. Greece*, judgment of 26 February 1998, Reports 1998-I, § 97). In the present case, the national courts neither stayed the proceedings pending the outcome of the enforcement proceedings concerning the bank's request for counter-enforcement nor was their outcome of importance for the proceedings complained of. The lapse of four years before the trial court cannot be justified by considerations of procedural efficiency as it should have acted with particular expedience given the length of proceedings at that stage.

44. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

45. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

47. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage for anxiety, emotional suffering and health deterioration resulted from the length of the proceedings.

48. The Government contested the claim as there had been no causal link between the violation alleged and the damage claimed. They referred to their arguments concerning the serial nature of the proceedings and the applicant's contribution to their length.

49. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,600 under this head, plus any tax that may be chargeable.

B. Costs and expenses

50. The applicant also claimed EUR 5,000 for the costs and expenses.

51. The Government did not express an opinion on the matter.

52. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The Court notes that the applicant failed to support his claim by any particulars and supporting documents. Nonetheless, it is satisfied that the applicant has incurred certain costs and expenses in the proceedings before it. Accordingly, making its assessment on an equitable basis, the Court finds it reasonable to award the applicant the sum of EUR 600 under this head, plus any tax that may be chargeable.

C. Default interest

53. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts which are to be converted into the national currency of the respondent State at a rate applicable at the date of settlement:
 - (i) EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 600 (six hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President